IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

(1) MICHELLE N. PORTER, as the Personal Representative of the Estate of Robert B. Porter, Deceased, Plaintiff,	)	
vs.	)	Case No. CIV-15-390-HE
(1) THE BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY, STATE OF OKLAHOMA; and (2) JACOB OWEN STREETER, DEPUTY OF OKLAHOMA COUNTY, in his individual and official capacities, Defendants.	)	

COMPLAINT

Plaintiff Michelle N. Porter, as the Personal Representative of the Estate of Robert B. Porter, Deceased, for her causes of action against Defendants, The Board of County Commissioners of Oklahoma County, State of Oklahoma and Jacob Owen Streeter, Deputy Sheriff of Oklahoma County, in his individual and official capacities, alleges and states:

The Parties

1. Robert Bennett Porter was born on May 25, 1947.

2. At the time of his death on February 19, 2014, Mr. Porter was 66 years old.

3. Before his death, Mr. Porter was a resident of Oklahoma County, State of Oklahoma which is located within the Western District of Oklahoma.

4. Plaintiff Michelle N. Porter is the daughter of Mr. Porter and the duly-appointed Administrator of the Estate of Robert M. Porter, Deceased as reflected in the Letters Testamentary filed in the District Court of Oklahoma County, *In the Matter of the Estate of Robert M. Porter,* Deceased, Case No. PB-2014-373.

5. Plaintiff Michelle N. Porter is a resident of the City of Seattle, State of Washington.

6. Defendant Board of County Commissioners of Oklahoma County, State of Oklahoma ("County") is a political subdivision of the State of Oklahoma and its county seat is Oklahoma City, Oklahoma which is located within the Western District of Oklahoma.

7. Upon information and belief, Defendant Deputy Jacob Streeter is a resident of Oklahoma County which is located within the Western District of

Oklahoma. During all relevant times described herein he was acting under color of law.

8. At the time of the events described herein, Deputy Streeter was employed as full time deputy sheriff of the Oklahoma County Sheriff's Department and had worked continuously with the Oklahoma County Sheriff's Department for the past eleven (11) years before the events described herein.

Jurisdiction and Venue

9. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the claims alleged arise under the Constitution and laws of the United States of America and pursuant to 42 U.S.C. § 1983.

10. This Court has supplemental jurisdiction over the state claims alleged herein pursuant to 28 U.S.C. § 1367(a).

11. This Court has personal jurisdiction over all the defendants because they are either political subdivisions of the State of Oklahoma or citizens of the State of Oklahoma.

12. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b) in that the defendants reside in the Western District of Oklahoma and a substantial part of the events giving rise to the claim occurred in the Western District of Oklahoma.

Fact Allegations

13. On January 27, 2014, Jacob Owen Streeter was an Oklahoma County Sheriff's Deputy assigned to a drug task force team for the Oklahoma County Sheriff's Department.

14. On the evening of January 27, 2014, Deputy Streeter was involved in a drug task force activity in the vicinity of Waterloo Road and Interstate 35.

15. The intersection of Waterloo Road and Interstate 35 is located approximately 5 miles northeast of the City of Edmond and the traffic volume along Interstate 35 increases as one travels southbound on Interstate 35 toward Oklahoma City.

16. At approximately 7:00 pm on January 27, 2014, the drug task force team had concluded their assignment near Waterloo Road and Interstate 35.

17. Deputy Streeter returned to his assigned patrol vehicle and decided to meet the task force team members at another location to the south of Waterloo Road and closer to Oklahoma City.

18. Deputy Streeter entered Interstate 35 at the Waterloo Road exit and drove his patrol vehicle onto the southbound lane of Interstate 35.

19. Deputy Streeter slowly increased the speed of his patrol unit to correspond with the normal flow of traffic with other vehicles traveling south on Interstate 35.

20. The posted speed limit is 70 miles per hour on this portion of Interstate 35.

21. After reaching a normal interstate speed consistent with the normal flow and traffic pattern, Deputy Streeter made a calculated and deliberate decision to position his patrol unit into the passing or fast lane of Interstate 35.

22. Deputy Streeter continued driving southbound on Interstate 35 in the passing or fast lane toward Oklahoma City with the normal flow of traffic and at the posted speed limit.

23. Deputy Streeter received no radio traffic and did not make any personal observations of any traffic behavior that would create or require an emergency response.

24. Deputy Streeter, while continuing to drive at normal highway speeds of 70 miles per hour and with the normal flow of traffic southbound on Interstate 35, was passed by a White Dodge Charger in the "slow lane."

25. Deputy Streeter observed that the White Dodge Charger did not have its headlights illuminated.

26. Deputy Streeter's observations of the White Dodge Charger did not evoke an emergent response. Instead, Deputy Streeter had time to think, plan, calculate and deliberate his reaction.

27. With the luxury of time and without being forced to make a split second decision, Deputy Streeter made a conscious and deliberate decision to simply increase the speed of his patrol unit and paralleled the movements of the White Dodge Charger.

28. Because Deputy Streeter was not hurried and was not being forced to make split second decisions, he made a further calculated and deliberate decision not to activate his emergency lights or sirens.

29. As Deputy Streeter continued to parallel the White Dodge Charger, he allowed himself to methodically deliberate and gather additional information.

30. Deputy Streeter deliberately and thoughtfully obtained a detailed description of the White Dodge Charger.

31. Deputy Streeter deliberately and thoughtfully planned and maneuvered his patrol unit into a position close enough to locate and read the license tag number of the White Dodge Charger as it continued down the right hand lane of Interstate 35.

32. Deputy Streeter deliberately and thoughtfully decided to make an attempt to alert the driver of the White Dodge Charger that he was traveling at night without his lights on.

33. Deputy Streeter deliberately and thoughtfully decided to turn the headlights of his patrol unit off and then back on to signal to the driver of the White Dodge Charger to turn its lights on.

34. Deputy Streeter, while not being forced to make split second decisions, used the radio in his patrol unit to communicate with the other members of the drug task force team.

35. Deputy Streeter's radio transmissions confirm that he was not confronted with an emergency but instead believed the White Dodge Charger was simply an unmarked patrol unit from another law enforcement agency.

36. Deputy Streeter is heard on radio traffic speaking with different members of the drug task force team.

37. Deputy Streeter is further heard on radio traffic specifically asking one of his partners if the other agency they were working with was driving a White Dodge Charger.

38. Deputy Streeter's radio traffic also confirms that he had the time to deliberate and ask members of the drug task force team if the White Dodge Charger was an emergency vehicle.

39. Deputy Streeter's radio traffic confirms there was time for a member of Deputy Streeter's unit to respond to his radio communications.

40. The radio traffic confirms that Deputy Streeter was advised that the other law enforcement agency involved in the Waterloo Road activity was not driving a White Dodge Charger; that they instead were driving a pickup truck or some other vehicle.

41. Deputy Streeter's patrol unit was equipped with a video camera manufactured by Watch Guard Video.

42. In addition to the recordings of radio traffic, most of Deputy Streeter's actions were preserved with video footage.

43. The video footage depicts Deputy Streeter traveling with the normal flow of traffic in the passing or fast lane of southbound Interstate 35 when he passed by a White Dodge Charger.

44. The video footage further depicts Deputy Streeter maneuvering his patrol unit to parallel the activity of the White Dodge Charger.

45. The video footage depicts Deputy Streeter turning his headlights off and then on causing the White Dodge Charge to turn on its lights.

46. The video footage shows that the White Dodge Charger, after turning on its headlights, activated its left turn signal and moves in front of Deputy Streeter in the passing lane of Interstate 35.

47. The video footage shows that the White Dodge Charger and Deputy Streeter pass two vehicles traveling in the right lane or the slow lane of Interstate 35.

48. Because this was not a rapidly evolving or emergency situation, the White Dodge Charger, after safely passing the vehicles in the slow lane, has time to activate his right turn signal and change lanes back to the right lane or slow lane of Interstate 35.

49. After the White Dodge Charger signaled a lane change and maneuvers into the slow lane, the video footage ends.

50. On January 27, 2014, Robert B. Porter was driving home from work in his 2001 Ford F150 pickup truck southbound on Interstate 35 at approximately the same location where the White Dodge Charger had activated his turn signal after passing the vehicles in the slow lane.

51. Upon information and belief, Mr. Porter, like the White Dodge Charger, had changed lanes from the slow lane to pass the same two vehicles but had not moved back into the slow lane of traffic.

52. Before the video footage is lost, however, a set of brake lights matching the size and description of Robert Porter's brake lights is clearly visible to Deputy Streeter traveling in the same lane as Deputy Streeter.

53. After the White Dodge Charger moved into the slow lane, Deputy Streeter continued to travel in the passing lane or fast lane and slammed his patrol unit into the back of Robert Porter's pickup.

54. Deputy Streeter's impact caused Mr. Porter's vehicle to depart Interstate 35 to the right in a broad slide before beginning to roll.

55. Mr. Porter's pickup continued to roll several times before coming to rest in a grove of trees.

56. Mr. Porter sustained physical injuries to his head, external trunk, arm and legs.

57. Mr. Porter's physical injuries required that he be removed from the scene and transported to the University of Oklahoma Medical Center by EMSA.

58. The emergency room physicians initially treated Mr. Porter for his injuries and later admitted him to its hospital facility's intensive care unit.

59. Mr. Porter remained under the care of the physicians and staff of the University of Oklahoma Medical Center from January 27, 2014 until February 19, 2014.

60. Mr. Porter's medical condition failed to improve and on February 19, 2014, Mr. Porter died as a direct result of the injuries he sustained after Deputy Streeter slammed his patrol unit into Mr. Porter's pickup causing it to depart from the interstate highway and roll several times before coming to rest.

61. The video footage recovered from the dash board camera depicting these events does not show that Deputy Streeter activate his emergency lights and/or siren at any point prior to the collision.

62. The Watch Guard Video system in Deputy Streeter's patrol unit is designed to record to a hard drive on board the patrol unit.

63. Upon information and belief, the Oklahoma County Sheriff's Department secured Deputy Streeter's patrol unit and all of its contents from the scene of the accident and removed it to Oklahoma County garage.

64. Upon information and belief, the Oklahoma County Sheriff's Department remained in sole and exclusive control of Deputy Streeter's vehicle and its contents following the collision.

65. Upon information and belief, the Oklahoma County Sheriff's office located the hard drive from the Watch Guard Video system installed in Deputy Streeter's patrol unit.

66. Upon information and belief, a DVD burned from the hard drive was sent to the Manufacture and/or Customer Service Representatives of Watch Guard Video to review.

67. Upon information and belief, the Watch Guard Video system was never placed into a "record" mode.

68. Representatives of Watch Guard Video determined that there were no "triggers" present to activate a "records" session; however, the DV1 is always buffering video until a power loss event.

69. Watch Guard Video, the manufacturer of the video system, states that the activation of emergency lights and sirens is an active "trigger" that converts the video system from a buffering mode to a record mode.

70. The hard drive inspected and reviewed by Watch Guard Video did not convert to the record mode thereby confirming that Deputy Streeter's state of mind was not having to deal with nor was he engaged in a rapidly evolving situation requiring split second decisions that required the activation of his emergency lights and sirens.

71. Deputy Streeter's state of mind that he was not dealing with an emergency or rapidly evolving situation requiring split second decisions is further confirmed because the Oklahoma County Sheriff's Department made no further efforts on the evening of January 27th to even attempt to locate the White Dodge Charger after Deputy Streeter slammed into Mr. Porter's vehicle.

72. Deputy Streeter's patrol vehicle was also installed with an air bag control module which is sometimes referred to as the vehicle's "black box."

73. The black box information from Deputy Streeter's patrol unit was analyzed and reviewed by a certified analyst from the Oklahoma Highway Patrol.

74. The certified Oklahoma Highway Patrol analyst reviewed the ACM data from the black box of Deputy Streeter's patrol unit.

75. The certified Oklahoma Highway Patrol analyst also reviewed the ACM data from the vehicle operated by Robert Porter.

76. The certified Oklahoma Highway Patrol analyst reconstructed elements of the collision from the information obtained from Deputy Streeter's black box for a time and distance analysis.

77. The certified Oklahoma Highway Patrol analyst reconstructed elements of the collision from the data on the black box to determine the speed of Deputy Streeter's patrol unit before the collision.

78. The certified Oklahoma Highway Patrol analyst was able to determine the speed of Deputy Streeter's patrol unit at various intervals before impact. For example, the data obtained from the black box identified the following speeds of Deputy Streeter's patrol unit:

.4 seconds before impact	108 mph
1.7 seconds before impact	111 mph
3.2 seconds before impact	112 mph
4.3 seconds before impact	113 mph
5.0 seconds before impact	114 mph

79. Upon information and belief, Deputy Streeter's patrol unit was also analyzed by the Oklahoma County Sheriff's Department Technology Group.

80. Upon information and belief, the supervision of the department's technology group located Deputy Streeter's MDT or on board laptop computer.

81. The on board laptop computer in Deputy Streeter's patrol unit lost power and/or the cables to the laptop computer were disconnected when Deputy Streeter slammed his patrol unit into Mr. Porter's pickup.

82. Upon information and belief, representatives from the Technology Department were able to reconnect the on board laptop computer to a power source on or about February 19, 2014.

83. Once power was restored to the MDT, the laptop computer opened to the computer screen that was visible and in use by Deputy Streeter immediately before the collision.

84. The computer screen on the MDT was open to the Mobile Cop Vehicle License Plate Search Screen.

85. The Mobile Cop Vehicle License Plate Search screen allowed Deputy Streeter to manually type in tag numbers of vehicles to gather registration and other information on a vehicle.

86. Deputy Streeter's computer screen on his on board laptop computer displayed a partial license tag entry (655 JG_).

87. Deputy Streeter's actions of manually typing on his laptop computer while paralleling his patrol unit to the White Dodge Charger is further confirmation that Deputy Streeter's state of mind was not having to deal with nor was he engaged in a rapidly evolving situation requiring split second decisions.

88. Deputy Streeter was deliberately and thoughtfully analyzing the situation and had the luxury of time to obtain a license tag number from the White Dodge Charger, open his browser to the Mobile Cop License Plate Search Screen and manually enter the license tag number using his laptop computer.

89. Representatives from the technology group ran the visible digits of the license tag number through various data bases to determine if there was a vehicle matching the description of a White Dodge Charger and containing the 5 known digits of the license tag number visible on Deputy Streeter's on board computer screen.

90. A possible match was obtained and personal contact by the Oklahoma Highway Patrol was later made with the registered owner of a White Dodge Vehicle who lived in Perry, Oklahoma.

91. After contact with the registered owner of the White Dodge Vehicle in Perry, Oklahoma, the registered owner denied any knowledge of the incident and further denied being in the vicinity of the collision on January 27, 2014.

92. The information obtained through the investigation of the collision by the Oklahoma Highway Patrol was presented to David Prater, the District Attorney for Oklahoma County.

93. District Attorney David Prater, after an initial review of the findings recused from any further involvement because Deputy Streeter was a member of the Oklahoma County Drug Task Force.

94. District Attorney David Prater referred the investigation of Deputy Streeter's action to the Canadian County District Attorney's Office for further review and investigation of potential criminal charges.

95. The evidence obtained from the Oklahoma Highway Patrol was presented and reviewed by the Canadian County District Attorney's Office.

96. Following a review of the evidence and independent investigation by the Canadian County District Attorney's office, a warrant for the arrest of Jacob Owen Streeter was issued by the Canadian County District Court, the Honorable Russell Hall.

97. On January 13, 2015, the State of Oklahoma charged Jacob Owen Streeter with one count of criminal misconduct – Negligent Homicide – believing that it could prove beyond a reasonable doubt that a crime which required proof of criminal recklessness had been committed by Deputy Streeter.

FIRST CAUSE OF ACTION

Substantive Due Process in Violation of 42 U.S.C. §1983
Against Deputy Streeter

98. Plaintiff incorporates paragraphs 1–29 as if specifically alleged herein.

99. The law was clearly established at the time of Deputy Streeter's actions as described herein.

100. In *Green v. Post*, 574 F.3d 1294 (2009) the Tenth Circuit codified the clearly established legal authority that the intent-to-harm standard applies in rapidly evolving, fluid and dangerous high speed pursuits where a law enforcement officer does not have the luxury of calm and reflective deliberation.

101. *Green v. Post, supra.,* also established the clear legal authority in the Tenth Circuit that a deliberate indifference standard applies in circumstances like those observed by Deputy Streeter on January 27, 2014. Deputy Streeter's actions were the result of the luxury of having time to make unhurried judgments, upon the chance for repeated reflection, largely uncomplicated by the pulls of competing obligations.

102. Deputy Streeter's actions as described herein violated the Constitutional Rights of Robert B. Porter.

103. The law was clearly established by the Tenth Circuit at the time of the events described herein by the legal precedent articulated in *Green v. Post, supra.*

104. Based on the holding and legal authority reasoned by the Tenth Circuit in *Green v. Post,* which was decided in 2009, it would be clear to Deputy Streeter that his conduct on the evening of January 27, 2014 as described herein, was unlawful under the circumstances.

105. Deputy Streeter knew on January 27, 2014 that his deliberate and indifferent actions as described and pleaded herein created an extreme great risk of serious injury to someone in Mr. Porter's position.

106. As described and plead herein, Deputy Streeter was subjectively aware of a substantial risk of serious harm to someone in Mr. Porter's position.

107. The deliberate and calculated actions by Deputy Streeter as described herein are of such a nature as to shock the conscience due to the luxury of time afforded to Deputy Streeter's decision making process.

108. The deliberate and calculated actions by Deputy Streeter as described herein are of such a nature as to shock the conscience due the fact that he first had the time and opportunity to reflect upon his actions during the evening of January 27, 2014.

109. As a direct and proximate result of the state of actions by Deputy Streeter, Mr. Robert Porter sustained physical injuries, mental injuries, medical expenses, lost wages and ultimately his death.

110. Michelle N. Porter, as the Personal Representative of the Estate of Robert B. Porter, Deceased will seek to recover all the rights and remedies provided under 42 U.S.C. §1983.

WHEREFORE, Michelle N. Porter, as the Personal Representative of the Estate of Robert B. Porter, Deceased, prays for judgment against Deputy Streeter as follows:

(1) For actual damages in sum in excess of $75,000 and in accordance with the proof at the time of trial;

(2) For all those damages afforded to the Estate of Robert B. Porter for his wrongful death as provided by statute or law in an amount in excess of $75,000 and in accordance with the proof at the time of trial:

(3) For punitive and exemplary damages as determined by the jury at the time of trial;

(4) For interest thereon as provided by law;

(5) For the costs and expert fees as provided by 42 U.S.C §1988;

(6) For any other such and further relief as the Court deems just and proper, whether that is specifically requested herein or requested at a later date.

SECOND CAUSE OF ACTION

NEGLIGENCE AGAINST THE BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY

111. Plaintiff incorporates paragraphs 1–110 as if specifically alleged herein.

112. Michelle N. Porter, in her capacity as the Personal Representative of the Estate of Robert B. Porter, caused a Notice of Claim pursuant to the Governmental Tort Claims Act to be served on the Board of County Commissioners of Oklahoma County on July 15, 2014.

113. The Tort Claim was deemed denied by operation of law following the expiration of 90 days.

114. The allegations and pendent claims for negligence are timely brought contemporaneously and as a pendent claim within 180 days.

115. Deputy Streeter's actions on January 27, 2014 were within the course and scope of his employment with the Oklahoma County Sheriff Department.

116. Deputy Streeter's actions on January 27, 2014 as described herein were reckless and negligent.

117. As a direct and proximate result of Deputy Streeter's actions as described herein, Robert B. Porter sustained physical injuries to his head, external trunk, arm and legs.

118. The injuries sustained by Mr. Porter in the events described herein ultimately resulted in his death.

WHEREFORE, Michelle N. Porter, as the Personal Representative of the Estate of Robert B. Porter, Deceased, prays for judgment against the Board of County Commissions of Oklahoma County as follows:

(1) For actual damages in sum in excess of $75,000 and in accordance with the proof at the time of trial;

(2) For all those damages afforded to the Estate of Robert B. Porter for his wrongful death as provided by statute or law in an amount in excess of $75,000 and in accordance with the proof at the time of trial:

(3) For interest thereon as provided by law;

(4) For any other such and further relief as the Court deems just and proper, whether that is specifically requested herein or requested at a later date.

WARD & GLASS, L.L.P.

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